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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,150	06/01/2001	Amir Varshovi	GTI-100XC1	8795

23557 7590 09/29/2003

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GAINESVILLE, FL 326066669

EXAMINER

QAZI, SABIHA NAIM

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/29/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/872,150

Applicant(s)

VARSHOVI, AMIR

Examiner

Sabiha Qazi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 19 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 + 10
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**Notice of References Cited**

Application/Control No.

09/872,150

Applicant(s)/Patent Under  
Reexamination  
VARSHOVI, AMIR

Examiner

Sabiha Qazi

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**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6560921 B1	05-2003	Roberto	47/58.1
	B	US-5603744	02-1997	Kurner	71/9
	C	US-6497741 B2	12-2002	Sower	71/11
	D	US-5451523	09-1995	Von Fahnestock et al.	435/290
	E	US-5549729	08-1996	Yamashita	71/26
	F	US-6303367 B1	10-2001	Kataoka et al.	435/262.5
	G	US-6173527 B1	01-2001	Pryor	47/58.1
	H	US-4952229	08-1990	Muir	71/7
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N	WO 99/61393	12-1999	WORLD	Roberto et al.	C05F 11/08
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Acknowledgement is made of the response and election of species without traverse filed in paper nos. 9 and 12 and IDS in paper no. 10. Species elected does not contain any specific bacteria; enzyme; organic based product, biosolid. Claims 1-16 and 16-24 are readable on elected species. The elected species are a) plant nutrients: nitrogen, phosphorus, and potassium; b) dry soluble plant nutrient: ammonium nitrate; c) beneficial microbe: bacteria; d) organic compound: humic acid; e) penetrants: one or more wetting agent; f) soil or other plant additive: natural enzymes; and g) organic base byproduct: biosolids. Claim 19 is withdrawn from consideration as non-elected invention. Claims 1-24 are pending. No claim is allowed at present time.

Claims are drawn to a method of preparing slow release organic base fertilizer comprising ingredients from a and b, component c is optional as in claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

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skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6560921. The reference teaches fertilizers containing humic acid, which is a complex substance formed by the organic compounds from the decomposition of vegetable waste, which is transformed under the action of microorganisms. See the entire document especially lines 45-50, lines 51-58 and lines 63-67 in col. 5.

The claims differ from the reference by reciting specific species and/or a more limited subgenus than the reference. It would have been obvious to one having ordinary skill in the art at the time of the invention to select any of the

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species of the genus taught by the reference, including those instantly claimed, because the skilled chemist would have the reasonable expectation that any of the species of the genus would have similar properties and, thus, the same use as taught for the genus as a whole, i.e., as fertilizer.

Example 1 on page 9, example 2 on page 10 and example 3 on page 11, disclosed is that comparison was made between a known slow release fertilizer and product of the presently claimed invention. Presently claimed invention's ingredients, ratio, proportions and the compositions are not disclosed in the specification.

One having ordinary skill in the art would have been motivated to select the claimed compounds from the genus in the reference since such compounds would have been suggested by the reference as a whole. It has been held that a prior art disclosed genus of useful compounds is sufficient to render prima facie obvious a species falling within the genus. In re Susi, 440 F.2d 442, 445, 169 USPQ 423, 425 (CCPA 1971), followed by the Federal Circuit in Merck & Co. V. Biocraft Laboratories, 874 F.2d 804, 10 USPQ 2d 1843, 1846 (Fed. Cir. 1989).

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

***Information Disclosure Statement***

Supplemental IDS filed in pare no. 10 is considered incomplete as it does not cite what advertisement, page number, etc., otherwise one who would like to get this reference would not know which advertisement was cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is 703-305-3910. The examiner can normally be reached on every business day.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



SABIHA QAZI, PH.D  
PRIMARY EXAMINER